

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNA RILEY,

Plaintiff,

v.

LLOYD G. PLOUTZ, et al.,

Defendants.

No. 1:20-cv-01177-DAD-EPG

ORDER GRANTING PARTIES’
STIPULATIONS FOR DISMISSAL FROM
THIS ACTION

(Doc. Nos. 11, 36, 38)

On August 5, 2020, plaintiff Donna Riley, in her official capacity as the Treasurer-Tax Collector of Stanislaus County, filed a first amended complaint in interpleader in the Superior Court of Stanislaus County against Lloyd G. Ploutz; Seeger Industries, Inc. (“Seeger”); Granada Park Homeowner’s Association (“Granada”); William R. Morehead; United States Internal Revenue Service (“IRS”); State of California Franchise Tax Board (“FTB”); and City of Modesto (“Modesto”). (Doc. No. 6-9 (“FAC”).) The FAC alleges as follows. Plaintiff sold tax-delinquent real property located at 336 De Vega Court, Modesto, California 95354 (“the Property”) at public auction, and plaintiff owned one of the parcels sold at the auction. (*Id.* at ¶ 10.) The Property sold at auction for the total purchase price of \$180,208.00, and \$168,533.44 in excess proceeds remains available to distribute to legitimate claims thereon. (*Id.*) Plaintiff alleges that she possesses no interest in the excess proceeds and is indifferent as to which defendants should receive them. (*Id.* at ¶ 20.)

1 On August 20, 2020, IRS removed the action to this federal court. (Doc. No. 1.) On
2 August 21, 2020, Seeger filed a cross-complaint against all other defendants. (Doc. No. 6-14.)¹
3 On September 17, 2020, Modesto filed a stipulation for dismissal with prejudice as to itself
4 pursuant to Federal Rule of Civil Procedure 41(a). (Doc. No. 11.) On September 30, 2020,
5 Morehead filed a cross-complaint against all other defendants. (Doc. No. 14.) On October 1,
6 2020, IRS filed a cross-complaint against Ploutz. (Doc. No. 15.)

7 On January 20, 2021, the assigned magistrate judge issued an order following the January
8 19, 2021 initial scheduling conference. (Doc. Nos. 24, 25.) The order recounted a discussion at
9 the scheduling conference, during which the parties discussed that Modesto's September 17, 2020
10 stipulation requested court relief beyond mere dismissal from the action. (Doc. No. 25 at 3–4; *see*
11 *also* Doc. No. 11 at 2.) The magistrate judge explained that an order requiring relief beyond
12 dismissal may require a request for dismissal under Rule 41(a)(2). (Doc. No. 25 at 4.)
13 Accordingly, the magistrate judge ordered the parties to file stipulations of dismissal as to
14 plaintiff, Modesto, and FTB no later than February 19, 2021 in accordance with Rule 41(a). (*Id.*
15 at 3.)

16 On February 10, 2021, the parties filed a stipulation to dismiss plaintiff from this action
17 with prejudice. (Doc. No. 28.) The parties also stipulated that they will each bear their own fees
18 and costs; that plaintiff shall be discharged and relieved of any further liability to all the named
19 defendants in connection with this action, the Property, and any claims submitted by the parties
20 related to the Property; and that plaintiff shall deposit \$176,079.02 into the Eastern District
21 Federal Court Treasury by March 5, 2021. (*Id.* at 2–3.)

22 On February 12, 2021, the magistrate judge issued an order concerning the February 10,
23 2021 stipulation for dismissal. (Doc. No. 32.) The magistrate judge noted that “several signature
24 blocks are unsigned,” and “[t]hus, the stipulation does not comply with Rule 41(a)(1)(A)(ii),

25 ¹ On September 8, 2020, IRS filed a supplement to its notice of removal, which attaches
26 additional records from the Stanislaus County Superior Court that were not previously filed with
27 the notice of removal. (Doc. No. 6.) These attachments include: (1) Seeger's cross-complaint,
28 which was filed in Stanislaus County Superior Court on August 21, 2020 (Doc. No. 6-14), and (2)
IRS' notice of notice of removal to federal district court, which was filed in Stanislaus County
Superior Court on August 24, 2020 (Doc. No. 6-15).

1 which permits voluntary dismissals without a court order by filing ‘a stipulation of dismissal
 2 signed by all parties who have appeared.’” (*Id.* at 1.) The magistrate judge ordered plaintiff to
 3 file a stipulation of dismissal signed by all parties by no later than February 19, 2021. (*Id.* at 2.)
 4 The magistrate judge noted that if “Plaintiff believes that the missing signatures are not necessary,
 5 on the basis that those parties have not appeared or for any other reason, Plaintiff may file a
 6 supplemental memorandum explaining her position in lieu of a revised stipulation.” (*Id.*)

7 On February 18, 2021, plaintiff filed a second stipulation for dismissal with prejudice as
 8 to herself. (Doc. No. 36) (listing signatures on behalf of plaintiff and IRS, Seeger, Ploutz,
 9 Granada, Modesto, and Morehead). Plaintiff also filed a supplemental memorandum, in which
 10 she states that she served all parties with the written stipulation and requested permission to sign
 11 on their behalf. (Doc. No. 37 at 1–2.) As of February 18, 2021, FTB was the only party that had
 12 not granted permission to electronically sign on its behalf. Plaintiff argued that because FTB has
 13 disclaimed any interest in this case, the parties in good faith anticipated no objection on FTB’s
 14 part. (*Id.* at 2) (citing Doc. No. 20 at 8–9.)

15 Subsequently, on February 22, 2021, the parties filed a stipulation for dismissal with
 16 prejudice as to Modesto and FTB.² (Doc. No. 38) (listing signatures on behalf of plaintiff and
 17 IRS, Seeger, Modesto, Granada, Morehead, and FTB).³ Modesto and FTB each disclaimed any
 18 further interest in the case, including any claims or interests they might have at issue in this case.
 19 (*Id.* at ¶¶ 2, 5, 6.) The parties stipulated that they will each bear their own fees and costs. (*Id.* at

20
 21 ² Stanislaus County is also referenced as a defendant throughout the February 22, 2021
 22 stipulation, and the parties stipulated for dismissal with prejudice as to Stanislaus County. (*See*
 23 Doc. No. 38 at 2–3, 6.) However, it appears that Stanislaus County is not a named defendant in
 24 this action. Neither the first amended complaint in interpleader (*see* FAC) nor any of the cross-
 25 complaints (*see* Doc. Nos. 6-14, 14, 15) name Stanislaus County as a defendant. Additionally,
 26 Stanislaus County Counsel Sweena Pannu—who signed the February 22, 2021 stipulation on
 behalf of plaintiff (*see* Doc. No. 38 at 4)—is listed on the docket solely as plaintiff’s counsel.
 (*See* Doc. No. 26) (designating Stanislaus County Counsel Pannu as plaintiff’s counsel).
 Accordingly, the court will not order dismissal of Stanislaus County, which is not a party to this
 action.

27 ³ Although Ploutz signed the February 18, 2021 stipulation, he did not sign the February 22,
 28 2021 stipulation. (*Compare* Doc. No. 36 *with* Doc. No. 38.) However, Ploutz has not yet
 appeared in this action. (*See* Doc. No. 38 at 2 n.1.) Thus, Ploutz’s signature is immaterial.

3.) The parties also stipulated that plaintiff and IRS, Seeger, Granada, and Morehead shall be discharged and relieved of any further liability to Modesto and FTB in connection with this action and the Property, including Modesto's claim in the amount of \$611.64 recited in the operative complaint (the "Modesto Claim"). (*Id.*; *see also* FAC. at ¶ 19.)

Pursuant to the parties' stipulations (Doc. Nos. 11, 36, 38) and good cause appearing, it is hereby ordered that:

1. This action is dismissed with prejudice as to plaintiff Donna Riley in her official capacity as Treasurer-Tax Collector of Stanislaus County; defendant and cross-defendant Modesto; and defendant and cross-defendant FTB;
2. This action proceeds on the following complaints:
 - a. Cross-claimant Seeger's cross-complaint against cross-defendants Ploutz, Granada, Morehead, and IRS (Doc. No. 6-14)
 - b. Cross-claimant Morehead's cross-complaint against cross-defendants Granada, Ploutz, Seeger, and IRS (Doc. No. 14); and
 - c. Cross-claimant IRS' cross-complaint against cross-defendant Ploutz (Doc. No. 15);
3. The parties shall bear their own fees and costs in this action, including attorneys' fees concerning any and all of defendant and cross-defendant Modesto's rights, title, and or interests in the Property, or any proceeds from the sale of the Property, including the Modesto Claim;
4. The parties shall be discharged and relieved of any further liability to plaintiff in her official Treasurer-Tax Collector of Stanislaus County, in connection with this action, the Property, and all claims made with respect to, arising from the Property and proceeds from the sale of the Property;
5. Plaintiff, defendant and cross-defendant IRS, and defendant and cross-defendant Seeger shall be discharged and relieved of any further liability to defendant and cross-defendant Modesto in connection with this action, the Property, and the Modesto Claim;

6. Plaintiff in her official capacity as the Treasurer-Tax Collector of Stanislaus County shall deposit the excess proceeds from the sale of the Property in the amount of \$168,533.44, along with the earned interest of \$7,545.58, for a total amount of \$176,079.02, by March 5, 2021;
7. The Clerk of Court is directed to terminate the following parties from this action:
 - a. Plaintiff and cross-defendant Donna Riley in her official capacity as Treasurer-Tax Collector of Stanislaus County;
 - b. Defendant and cross-defendant Modesto; and
 - c. Defendant and cross-defendant FTB; and
8. The Clerk of the Court is directed to update the docket to reflect cross-claimant Seeger's cross-complaint against cross-defendants Ploutz, Granada, Morehead, and IRS (Doc. No. 6-14).

IT IS SO ORDERED.

Dated: **February 25, 2021**


UNITED STATES DISTRICT JUDGE